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INDIGENOUS ISSUES

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 January 1998]

1. The International Federation of Human Rights (IFHR) wishes to draw attention to the fact that indigenous peoples, whose existence as peoples is under great threat, have an imperative need for unequivocal recognition and appropriate protection for their rights. IFHR is greatly concerned about the situation of indigenous populations, who suffer from exclusion and serious discrimination, and is disturbed to find that in most countries they still do not enjoy facilities enabling them to choose their models of economic, social and cultural development freely, as required by international law.

2. Major initiatives have been launched in the United Nations, including the proclamation of an International Decade of the World's Indigenous People, with the aim of adopting a declaration on the rights of indigenous peoples and setting up a permanent forum for indigenous issues. These projects ought now to be brought to a successful conclusion.

3. IFHR stresses that protection for the human rights of indigenous peoples can only be effective if it is adapted to their individual situations. Their rights ought to be fully recognized by precise texts and their situation dealt with by appropriate organs.

Draft declaration on the rights of indigenous peoples

4. IFHR notes with disappointment that the Working Group set up under Commission on Human Rights resolution 1995/32 to draw up a draft declaration on the rights of indigenous peoples ended its 1997 session by adopting only two articles, which, though admittedly important ones, are minor in relation to the scope of the project as a whole.

5. In deciding to base its work on the draft adopted by the Working Group of the Sub-Commission, the Working Group of the Commission took a constructive approach, refusing to let the project get bogged down after the many years of work and consultation that had gone into it.

6. However, it appears from Governments' statements at sessions of the Working Group of the Commission that the stumbling block in all discussions remains indigenous peoples' right of self-determination. That right, is the foundation for the rest of the draft declaration: without it, the project would lose its essential substance.

7. The right of self-determination of peoples, however, has long been part of international law. It is to be found, in its most explicit form, in common article 1 of the two International Human Rights Covenants of 1966. Nothing in the way those articles are formulated places any restriction on the "peoples" in question as subjects of the right of self-determination. It is now time that States accepted their responsibilities under the international law they have created: the linguistic subterfuge of treating indigenous persons as populations and not peoples is simply a means of denying them their rights. It is no longer possible today to use such grounds as a reason for continuing to hold up work on the adoption of the draft declaration.

8. It is essential that the principle of non-discrimination in the enjoyment of human rights should be applied to indigenous persons. Nevertheless, that is not enough when what is at stake is to do indigenous peoples justice, particularly with regard to control over land, territory and natural resources. It is not enough, either, when it is a question of giving

these peoples the means to preserve their specific cultures and to develop economically, socially and culturally in accordance with their own wishes and development models.

Proposal for the establishment of a permanent forum for indigenous peoples

9. The gaps in the existing United Nations system as far as indigenous issues are concerned make it necessary to establish a permanent forum specifically to deal with such questions. The particular and complex nature of indigenous affairs requires that they should be centralized and dealt with in a manner that takes account of their interdependence.

10. IFHR was actively involved in the work of the second workshop on the question, organized at Santiago. It calls upon States to establish such a forum as soon as possible and supports Sub-Commission resolution 1997/10 recommending that the Commission should consider ways of furthering its establishment. The forum should have a broad mandate, covering all relevant sectors of United Nations activities. Conceived as an interface between Governments, indigenous peoples and the United Nations, the forum could base its work on the future declaration on the rights of indigenous peoples and, in the meanwhile, start examining the various international instruments establishing indigenous rights. The establishment of this body, which should come under the Economic and Social Council, would be a step towards the recognition of indigenous peoples as members of the family of peoples of mankind.

Consequences of the activities of national and transnational corporations for the rights of indigenous peoples

11. The exploitation of natural resources in indigenous lands by national or transnational industrial corporations, without any legal or moral rules, poses an acute threat to the survival of indigenous peoples as individual groups and to the life and dignity of the persons belonging to them.

12. The international community should therefore draw up a general system of rules applicable to transnational corporations, paying due regard to the specific problems raised when their activities are conducted in indigenous territories. These rules should among other things make it an obligation for the corporations concerned to obtain the free and informed consent of indigenous peoples, through their chosen representatives, before initiating or conducting activities on their land, territory or resources. Provision should be made for consultation of indigenous peoples at all stages. Mitigatory measures (limitation of negative effects of operations on the environment) and mechanisms for compensation and profit-sharing should be introduced. IFHR supports the initiative of the indigenous organizations which have put forward guidelines that multinational corporations ought to agree to follow (E/CN.4/Sub.2/1997/14), but considers it necessary to draw up binding international rules on that basis.

13. IFHR is publishing early in 1998 a mission report on this question, dealing with the situation of the Mapuche peoples in Chile, and particularly the problems raised by the project for the construction of a dam on the Bio-Bio river by ENDESA S.A., a private electricity company.

Other matters of concern

14. IFHR considers that it is of the highest importance to protect the heritage of indigenous peoples. The common heritage of mankind is impoverished when a people disappears, with its special characteristics, its knowledge, its beliefs, its arts and its sites. The protection of the rights of indigenous persons, in this field, should be suited to their particular situation: it is necessary to develop a sui generis regime applicable to their heritage.

15. IFHR supports Sub-Commission resolution 1997/13 proposing that a new seminar should be held on the draft principles and guidelines for the protection of the heritage of indigenous peoples proposed by the Sub-Commission's Working Group (E/CN.4/Sub.2/1995/26). This draft has the great merit of giving a particularly broad definition of the concept of "heritage of indigenous peoples" and introducing innovative ideas suited to the particular problems facing indigenous peoples.

16. IFHR notes that the Convention on Biological Diversity recognizes the importance of promoting and protecting indigenous peoples' right to their own knowledge, but that it does not lay down rules with regard to biological and genetic prospecting in their territories. However, in practice, it is disturbing to note that the rights of indigenous peoples in this field are denied or neglected by certain international corporations, which do not hesitate to negotiate directly with families, thus bypassing the indigenous representative bodies. The draft declaration on the rights of indigenous peoples might usefully make good the omissions in the Convention, particularly in articles 3, 19, 20, 29 and 30. It is essential for the survival and development of indigenous peoples that their rights, as peoples, over their own genetic resources and their traditional lore should be recognized. The Brundtland report of the World Commission on Environment and Development entitled "Our Common Future" (March 1987) stressed the urgent need for action in this field.

17. IFHR is greatly concerned at the precarious situation in which indigenous peoples find themselves, as was unfortunately shown by the events in Chiapas in December 1997 (see IFHR's written statement on the situation in Mexico). The refusal to recognize the autonomy of these peoples as such is compounded in many countries by their members' inability to secure respect for their fundamental rights. That is why IFHR supports indigenous persons' efforts to secure recognition of their rights and of their place in the United Nations. It calls upon States to take practical measures to guarantee the full exercise by indigenous peoples of their rights.

18. Because it recognizes the importance and urgency for "Our common future" of securing full recognition for the rights of indigenous peoples, IFHR decided at its thirty-third Congress, held at Dakar in November 1997, to set up its own unit for coordination and expertise on the question of indigenous peoples' rights.